



Federal Communications Commission
Washington, D.C. 20554

March 13, 2024

DA 24-243

In Reply Refer to:

1800B3-TSN

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Bump FM Inc.
c/o Charles Edward Washington
585 Smithfield Road
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Aaron Read
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In re: **Bump FM Inc.**
New LPFM, Glocester, RI
Facility ID No. 787990
Application File No. 0000232229

Informal Objection

Dear Applicant and Objector:

We have before us the above-referenced application (Application) for a construction permit for a new low power FM (LPFM) station at Glocester, Rhode Island, filed by Bump FM Inc. (Bump FM) on December 11, 2023, and amended on February 6, 2024. We also have before us an Informal Objection (Objection) to the Application, filed by Aaron Read (Read) on December 26, 2023.¹ For the reasons set forth below, we grant the Objection in part and dismiss the Application.

¹ Pleading File No. 0000234038. The Objection did not include proof of service on Bump FM. On February 8, 2024, Bump FM filed an opposition to the Objection (Opposition). Pleading File No. 0000238544. The delay in filing was due to Read's apparent failure to serve a copy of the Objection on Bump FM. Read's failure to serve the Objection was called to our attention in Bump FM's Supplement, filed on February 28, 2024. Pleading File No. 0000240003. Ordinarily, the Bump FM Supplement would be an unauthorized pleading and, therefore, would not be considered. See 47 CFR § 1.45; see also *New Life Broadcasting*, Letter, 25 FCC Rcd 7293, 7294, n. 5 (MB 2010) (declining to consider unauthorized pleadings pursuant to section 1.45 of the rules). The Commission's rules do not require that an informal objection be served on an applicant. See 47 CFR § 73.3587 (procedures for filing informal objections); compare 47 U.S.C. § 309(d), 47 CFR § 73.3584 (procedures for filing petitions to deny). In the interest of having a complete record, however, the staff forwarded to Bump FM a copy of the Objection, giving the applicant 15 days in which to file the Opposition, consistent with the Bureau's practice. See Email from Ryan McClafferty, Attorney Adviser, Audio Division, FCC Media Bureau, to Charles Washington, Bump FM Inc., and Aaron Read (Jan. 26, 2024, 10:36 EDT); see also *Centro Cristiano de Vida Eterna*, Order and Consent Decree, 37 FCC Rcd 4536, 4541 n.60 (MB 2022). Because Bump FM filed a timely opposition in response to the staff email, we disregard the Supplement. Read filed a reply to the Opposition (Reply) on February 22, 2024. Pleading File No. 0000239659.

Background. Bump FM filed the Application on December 11, 2023, during the 2023 LPFM filing window.² In the Application, Bump FM listed its local address as “371 Putnam Pike STE 230#1043, Smithfield, RI 02917.”³ In his Objection, Read states that this address is a Staples office supply store, that the “#1043” in the address implies a mailbox only, rather than an actual headquarters, and that this is the only address listed in the Application within 10 miles of the proposed transmitter site.⁴ Read further argues that a mailbox does not qualify as a “physical headquarters” or a “campus” for purposes of establishing local presence under section 73.853(b)(1) of the Commission’s rules.⁵ Finally, Read states that Bump FM did not submit an educational statement with the Application.⁶ Read thus urges the Commission to dismiss the Application.

Bump FM subsequently amended its Application on February 6, 2024, changing its address to 585 Smithfield Rd., North Smithfield, RI 02896.⁷ In its Opposition, Bump FM states that the address listed in the original Application, while a Staples office supply store, also constituted an office because Bump FM “had paid Staples to allow [Bump FM] use of office space through their Staples Coworking program.”⁸ Bump FM further states that “[i]n an abundance of caution,” it additionally leased and occupied a commercial space at 585 Smithfield Road in North Smithfield, Rhode Island, which is also within 10 miles of the proposed transmitter site, while concurrently paying for the office space at 371 Putnam Pike in Smithfield.⁹ It also asserts that, while it did not submit a separate educational program, its “Nonprofit Exhibit” to the Application outlined the proposed programming and its educational nature.¹⁰

In his Reply, Read reiterates that the addresses provided in the Application for the officers and board members of Bump FM are all more than 10 miles from its proposed transmitter site.¹¹ He further

² *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

³ See Application, Applicant Information. The Application was accepted for filing on January 4, 2024. See *Applications*, Public Notice, Report No. PN-1-240104-01 (MB Jan. 4, 2024).

⁴ Objection at 1. The officers and director of Bump FM all listed their addresses as 25 Metropolitan Road, Providence, Rhode Island 02908, more than 10 miles from the proposed transmitter site. See Application, “Parties to the Application” section; see also Objection at 2.

⁵ 47 CFR § 73.853(b)(1). See Objection at 1.

⁶ Objection at 1.

⁷ Amendment to a Low-Power FM Station Construction Permit Application, Application File No. 0000232229 (Feb. 6, 2024) (Amendment).

⁸ Opposition at 1 and Exhibit 2.

⁹ Opposition at 1.

¹⁰ Opposition at 1 and Exhibits 3 and 4. See also *Bump_FM_Inc_Nonprofit_Exhibit.pdf* (Nonprofit Exhibit), attached to Application.

¹¹ Reply at 1. Read did not address, in his Reply, his allegation that Bump FM failed to include a statement in the Application that the proposed station will be used to advance an educational program. We find that the statement outlining the proposed station’s programming in its Nonprofit Exhibit fulfills this application requirement, and on that basis Read’s Objection IS DENIED IN PART.

notes that the Staples Coworking program is not available in any of Staples’s Rhode Island locations.¹² He concludes that because “the original application did not credibly certify a physical headquarters, or campus, nor that at least 75% of its board members were located within 10 miles of the transmitting antenna,” the Application failed to meet the local criteria at the time of application, and must thus be dismissed.¹³

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),¹⁴ petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.¹⁵ We find that Read has met this burden.

An LPFM applicant must meet basic eligibility requirements¹⁶ and qualify as a “local” entity at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application).¹⁷ In order to qualify as local, an LPFM applicant that does not propose a public safety or tribal service will be deemed local if it can certify, at the time of application, that . . . :

(1) The applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets; [or]

(2) It has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets¹⁸

Because the Providence-Warwick-Pawtucket Nielsen Radio Metro covers the entire State of Rhode Island,¹⁹ and is ranked number 44 among urban markets,²⁰ an LPFM applicant for a station in Rhode Island must demonstrate that its headquarters is located, or 75% of its board members reside, within 10 miles of the proposed site for the transmitting antenna.²¹ In the original Application, Bump FM

¹² Reply at 1 and note 1.

¹³ Reply at 2. *See also* 47 CFR § 73.853(b).

¹⁴ 47 U.S.C. § 309(d).

¹⁵ *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁶ *See* 47 CFR § 73.853.

¹⁷ *See* Instructions for LPFM Application, Legal Certifications, Eligibility Certifications, and Community-Based Criteria Certifications. *See also* LPFM Application, Legal Certifications, Eligibility Certifications, and Community-Based Criteria Certifications.

¹⁸ 47 CFR § 73.853(b).

¹⁹ *See* <https://enterpriseefiling.fcc.gov/dataentry/api/download/attachment/25076f91835cf76001836bc9b09f0874>.

²⁰ *See* The Nielsen Company (US) LLC, Radio Market Survey Population & Information, Fall 2023, at 3 (2023) https://www.nielsen.com/wp-content/uploads/sites/2/2023/08/redbook_fa23.pdf.

²¹ *See supra* note 18.

certified that it satisfies the local applicant criteria based on its physical headquarters in Smithfield, Rhode Island, within 10 miles of its proposed transmitting antenna site.²² Although Bump FM amended its application in February 2024 to change its address to North Smithfield, Rhode Island, this is not merely a correction of a typographical error, but rather a new address different from that certified in the original Application. We have been able independently to confirm Read’s assertion that Staples Coworking is not available at the address given in Bump FM’s original application.²³ Moreover, Bump FM does not state when it first occupied the office space at 585 Smithfield Road in North Smithfield. The earliest suggestion that Bump FM’s headquarters was located in North Smithfield occurs in its 2024 Annual Report, filed with the State of Rhode Island on January 8, 2024, almost a month after the original Application was filed.²⁴ Because there is no indication in either the Application or the February 2024 Amendment that, as of the date the original Application was filed, Bump FM had a headquarters located within 10 miles of its proposed transmitter site, or that 75% of its board members lived within that same 10-mile limit, Bump FM has not sufficiently demonstrated that it was local at the time the Application was submitted. Therefore, we conclude that Bump FM does not qualify as local under section 73.853(b) of the rules.²⁵

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed by Aaron Read on December 26, 2023, (Pleading File No. 0000234038) **IS GRANTED IN PART AND DENIED IN PART.** The Application for a new LPFM construction permit filed by Bump FM Inc. (File No. 0000232229) **IS DISMISSED.**

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²² See Application at Legal Certifications, Community-Based Criteria Certifications.

²³ See <http://staplescoworking.com>. According to the website, Staples Coworking offers office space in seven locations in Massachusetts—Boston, Brighton, Cambridge, Danvers, Needham, Norwood, and Somerville—as well as in Auburn, Maine. No Rhode Island locations are listed.

²⁴ State of Rhode Island Non-Profit Corporation Annual Report, Filing Number 202443821460, available at https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSearchRedirector.aspx?Action=PDF&Path=CORP_DRIVE1/2024/0108/000000000/3303/202443821460_1.pdf.

²⁵ 47 CFR § 73.853(b). We note that, in general, a dismissed applicant has one opportunity to file a minor curative amendment to its application and petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*. Any amendment and petition must be filed within 30 days of the dismissal, propose only minor changes, and comply with all relevant rules. See *Procedures Public Notice*, *supra* note 2, at 12.